

**To:** Manville, Jennifer[manville.jennifer@epa.gov]  
**From:** Hanson, Kristen  
**Sent:** Wed 5/11/2016 8:17:14 PM  
**Subject:** FW: Call with EPA Set for May 6th at 1:00 pm CT- Notes and Outcomes  
Communication Meeting on Tower Standard May 26 2016 Agenda.docx

Call Notes that Larry is referring to

**From:** Hanson, Kristen  
**Sent:** Wednesday, May 11, 2016 9:45 AM  
**To:** 'Wawronowicz, Larry (lwawronowicz@ldftribe.com)'; Allen, Dee  
**Subject:** Call with EPA Set for May 6th at 1:00 pm CT- Notes and Outcomes

May 6<sup>th</sup> Call Notes:

Present:

Erik Olson

Gary Victorine

Sherry Kamke

Richard Du Bey

Jenny Manville

Bob Egan

Dee Allen

Kristen Hanson

Materials:

In advance of meeting, Sherry provided May 26<sup>th</sup> agenda to both Jenny and Eric- pre-call discussion. Eric asked Sherry to share it with the Tribe (attached)

#### Outcomes:

- 1) Sherry directed Larry Margaret Communication re: 2-party MOU in advance of all party meeting
- 2) Pre May 26<sup>th</sup> Technical Presentation on Site Conditions with Eric, Richard, Tribal program staff, EPA program Staff- scheduled for Thursday 19th at 9 am
- 3) Eric- Margaret will be willing to affirm Federal- Tribal authority at the start of the May 26th meeting.

#### Notes:

##### Eric Introduction and Goal of Call

- [REDACTED] Tribe has concerns about process for future work
- [REDACTED] EPA has concerns
- [REDACTED] Take time to strategize in advance of May 26th Meeting

##### Richard

- [REDACTED] Discusses working in a team, having Eric involved in discussion, on an ongoing basis Eric is needed for legal sideboards regarding the grey zone of the state work
- [REDACTED] Because RCRA/LUST program in State of Wisconsin has no rulemaking- Tribe carrying burden of uncertainty
- [REDACTED] In absence of clear roles- state taking advantage- At what Cost?
- [REDACTED] What benefit does the Tribe get from State Involvement- and at what cost
- [REDACTED] Burden to the Tribe= uncertainty

- Define EPA-Tribe role in clear fashion avoids- delay, uncertainty, wasted resources

- No ambiguity- solid footing to Advance Environmental Goals for this site and the others

Eric

- EPA and State have different interpretations of asserting programs and jurisdiction

EPA Opinion- Federal and Tribal authority applies

State Opinion- Where Non Tribal owns property- State, under State law, has program authority. State believes they have jurisdiction

In the past- EPA has not countered State program authority, but EPA is working toward a better understanding

EPA- supports Tribal Jurisdiction and made a clear statement to the state

Sherry

- Sherry interrupted Eric to say that her understanding was- In recent meeting settings, WDNR in Indian country fee land- the state has to respond, state law requires them to do this action

Richard

- How is this handled elsewhere in Region 5 when State exercising jurisdiction on Tribal Land?

Eric

- Sag- Chippewa- non environmental issue (tax, law enforcement)- Non member/fee land- State and County have broad settlement agreement on how state divides jurisdiction- Environmental Issues not addressed in settlement

- EPA duty- Enforcing federal enacted programs

- RCRA delegation to the States is the principal process showing a conclusion

Sherry

- State program approval = delegation
- WI not coming in for state program approval

Eric

- One Cleanup MOA with the state included LUST

Sherry

- Not sure that includes LUST- think silent on LUST

Eric

- LUST included, silent on Indian County
- MOU does not give program authority

Richard

- State Program funded by EPA?

Eric

- PECFA program is a State Fund

Richard

- [REDACTED] Feds funding State program- seats in the chair. Is the State receiving Federal Money to operate their program?

- [REDACTED] Discussion of using federal money to exercise jurisdiction inappropriately on Tribal Lands

Sherry

- [REDACTED] Not Sure if EPA provides grant funding to the State

Eric

- [REDACTED] This is something to look into! If this is the case, State can not use federal funds this way.

- [REDACTED] We will look into this.

Richard and Eric Introduce a 2 way MOU that defines roles- what- when how

Sherry

- [REDACTED] Makes sense programmatically

- [REDACTED] A good amount of time is spent on tower standard

- [REDACTED] Worried about doing both at the same time

Eric

- [REDACTED] Needed here- other tribes would benefit

Sherry

- [REDACTED] Larry will need to approach Margaret about 2 way MOU

- [REDACTED] Sherry will also discuss with Margaret

Someone

- [REDACTED] Purpose of meeting with the state- clarify relationships

Eric (and others)

- [REDACTED] Paradigm- undercut assumptions
- [REDACTED] If State Program has federal funding, this would be useful at the site
- [REDACTED] A good portion of cost 2012 or so forward
- [REDACTED] Considered Previous work Done
- [REDACTED] Actions taken under program net benefit
- [REDACTED] The Program Still believes value in proceeding with State/REI
- [REDACTED] Program comfortable with REI work
- [REDACTED] Allow PECFA process and supplement
- [REDACTED] Stick with us through May meeting
- [REDACTED] Timelines on these types of efforts

Kristen answers a technical question from Richard.

- [REDACTED] Past- We are now discovering that REIs remediation did harm to the site. The remediation system drew contamination down into the aquifer producing an area of free product (gas/oil on soil cuttings) at a depth well below the water table. THis contamination is much more difficult and incredibly more expensive to investigation and remediate. A simple cleanup project has become much more complicated because of REIs action.

- [REDACTED] REI did harm in the past

1) Drew contamination to depth with a remediation system

2) Illegally discharge contamination into Haskell lake

- [REDACTED] In the Present- Supplemental EPA work was not implemented because REI did not provide data

- [REDACTED] Discuss Tribal Site Investigation Requirement and EPA Corrective Action Requirement-

- [REDACTED] Looking Forward Future- We will need a Site Investigation Plan and a Complete Site Investigation to then evaluate Remedial Alternatives.

- [REDACTED] Small isolated scopes of work are not building a Site Investigation – give a couple examples- then use a metaphor of small isolated scopes of work on a dart board.

- [REDACTED] Would like to see access to State funds, but uncertain how that is possible- Needs for Site Investigation, Cooperative Interim Action (need EPA for some aspects of source removal-disposal costs, etc) , Coordination with Other BIA USGS work, are not fitting with REI work

Dee answers question from Richard

- [REDACTED] Disappointment in inaction
- [REDACTED] Unable to give much if any progress to council
- [REDACTED] REI problem

Eric-

- [REDACTED] Larry should share with Margaret- might be at a place to kick State out

Richard

- [REDACTED] What are other options?

Richard

- [REDACTED] Looking at Agenda and invited parties- this appears to be a show
- [REDACTED] Might suggest consider a technical aspects- What has been done and what needs to be done
- [REDACTED] Based on technical, there is a chance to make this work
- [REDACTED] With no plan going forward, meeting now with this level of uncertainty is unproductive

Eric

- [REDACTED] Agrees with technical evaluation of what is possible!

Sherry

- [REDACTED] DNR felt strongly that REI and Kozaks be present.
- [REDACTED] If we go back to the state and say we don't want Kozak or REI present, it will take a more time to find a time and suitable place.
- [REDACTED] The idea is to come out of that meeting with a plan
- [REDACTED] For the Technical part- introduce Kozak and REI component
- [REDACTED] Excuse REI and Kozak Then continue on meeting

Richard

- [REDACTED] Federal Jurisdiction- willing to draft speaking points for federal jurisdiction statement

Eric



- Margaret is prepared and willing to make federal jurisdiction statement

Richard

- For this to have any benefit- technical dealt with in advance of meeting
- Draft Technical Docs by one or more parties, share around, discussion/plan in advance of meeting

Bob

- All data has been shared with Tribe and State
- Bob Gets VERY upset and talks about his 30 years of experience and disagrees with a Site Investigation Approach. Takes Issue with dartboard metaphor.

Richard/Eric

An Interim Conference call is planned that includes

- Bob- A short summary about what we know about the site- this paragraph is all that Bob can prepare because he will be in the field for the next three weeks.
- Kristen- A powerpoint about what is known about the site
- This will be used for an approach going forward
- Materials will be shared (powerpoint/bob summary) in advance of Thursday May 19<sup>th</sup> Call-
- Bob won't be able to share his summary until the 18<sup>th</sup>

-----Original Message-----

From: Richard Du Bey [<mailto:RDuBey@scblaw.com>]

Sent: Wednesday, May 04, 2016 11:36 PM

To: Hanson, Kristen

Cc: Allen, Dee; Wawronowicz, Larry

Subject: Re: Call with EPA Set for May 6th at 1:00 pm CT

Confidential Attorney-Client Communication

Dear Kristen

Thanks for preparing the proposed agenda. I think that we need to state the obvious (at least to us) that we need both a short term and a long term RCRA-UST Program strategy.

The jurisdictional distraction--which results from EPA's inconsistent messaging is not in the Tribe's best interests and certainly does little to either advance EPA's Indian Policy or further the State's understanding of the proper role of the LDF Band as a sovereign government.

To the extent that EPA's implementation of the short term strategy--of using State funds--displaces or diminishes the long term strategy toward the State's recognition of LDF sovereignty, the short term strategy is unacceptable as it has apparently served to embolden the State.

We should ask whether EPA is satisfied with the current situation. And, if not--what EPA plans to do now that plan "A" has not worked.

In my view, we should use this "consultation" opportunity to inform EPA that it is the position of the LDF Band that there is no valid reason why EPA did not follow proper procedure (under the Administrative Procedure Act) and require the State to submit its RCRA UST program to EPA for approval and delegation. In practical effect, by not taking such action EPA acted beyond the scope of its statutory authority by doing so, failed to define its, and the LDF's proper role in the RCRA statutory scheme.

As a result, EPA has undermined the ability of the Tribal UST program to effectively protect human health and the quality of the reservation environment.

This is a serious matter that needs to be addressed sooner rather than latter. I expect that Region 5 does not want further criticism of its leadership failures, but it may well be time to play that card.

Let me know if you what your reaction is to our taking a hard line with EPA and if the Team would like to schedule a short internal call prior to our call on Friday with EPA.

Take care,

Richard

Sent from my iPhone

On May 4, 2016, at 9:12 AM, Hanson, Kristen  
<[KHanson@ldftribe.com](mailto:KHanson@ldftribe.com)<<mailto:KHanson@ldftribe.com>>> wrote:

Good Morning Richard:

I agree with your note below. At least we get access to Eric and all the players brought to the table. Eric has been excluded as poor decisions were made. The missing content could be addressed the call agenda. Below is a draft agenda for the call. Please change or commit as you see fit. I did get a chance to speak with Jenny for a few minutes after her Chicago recon. The notes are provided below. Jenny is expected on the Friday call.

#### Draft Agenda for May 6th Call

- 1) State Involvement Viability (PECFA)- past, present and future
- 2) Federal Overarching Assessment and Cleanup Strategy- What Is This?
- 3) Potential Meeting Logistics

#### Jenny's Recon Report

#### Jenny Chicago Meetings

Jenny met with Sherry Kamke in Chicago. Here are her takeaways from Sherry

- Sherry stresses the EPA is doing everything they can to put the Tribes relationship with EPA first

- There is some communication struggles- There are so many levels of communication- Bob is communicating with Tribal Staff, Larry is communicating with Margaret, Sherry is left out.
- EPA has offered EPA-Tribe 2 way technical calls and the offer was turned down by the Tribe
- Removing the State from the process will slow the project to a “glacier pace”
- Sherry was surprised by Jenny’s questions, and thinks EPA is effectively communicating with the Tribe

Jenny Met with Eric Olson and Kasey Ambutus

- Jenny sighs when she names Kasey, the conversation may have been hampered by Kasey’s presence
- Eric has a more realistic understanding of the programs shortcomings
- All Eric can do is advise his client to take a more aggressive approach
- Eric thinks a EPA-Tribe 2way MOU would be good
- Eric says that the LUST program’s deep desire to use state fund is driving a lot of interaction with the State

Jenny’s big Picture

- Jenny thinks there needs to be a Federal Overarching Assessment and Cleanup Strategy- EPA needs to take the lead
- A better understanding of how to work together i.e. MOU
- Sherry mentioned several times that the Tribe turned down the 2 way update calls.

Kristen

-----Original Message-----

From: Richard Du Bey [<mailto:RDuBey@scblaw.com>]

Sent: Thursday, April 28, 2016 5:40 PM

To: Hanson, Kristen; Allen, Dee; Wawronowicz, Larry

Subject: Fwd: Call with EPA Set for May 6th at 1:00 pm CT

Confidential Communication

Dear Clients:

We are set for the EPA call. Erik's note is consistent with my conversation with him, but does not go far enough with regard to EPA's obligation under RCRA and under its trust responsibility to the Tribe.

Let me know what you guys think.

Richard

Sent from my iPhone

Begin forwarded message:

From: "Olson, Erik"

<[olson.erik@epa.gov](mailto:olson.erik@epa.gov)<<mailto:olson.erik@epa.gov><<mailto:olson.erik@epa.gov><<mailto:olson.erik@epa.gov>>>>

Date: April 28, 2016 at 3:29:49 PM PDT

To:

"[rdubey@scblaw.com](mailto:rdubey@scblaw.com)<<mailto:rdubey@scblaw.com>><<mailto:rdubey@scblaw.com><<mailto:rdubey@scblaw.com><<mailto:rdubey@scblaw.com>>>>

Subject: Re: Call with EPA Set for May 6th at 1:00 pm CT

Richard:

We can use my section conference line:

877-226-9607

Conference Code: 835 899 6768

Here is how I described what I believe to be the goal of our call together to the other EPA staff attending:

"To strategize as to how to make the most of the May meetings [with all parties involved in the Tower Standard situation], including what to set up on the agenda, and what our goals are

coming out of the meeting. Put another way, why are we having these meetings, what do we hope they accomplish, and how can we best try to make that happen."

If you have a different understanding of what we will talk about together on the 6th please let me know, and I will try to make sure we are in a good position to address your concerns.

Regards,

Erik

From: Richard Du Bey

<[RDuBey@scblaw.com](mailto:RDuBey@scblaw.com)<<mailto:RDuBey@scblaw.com><<mailto:RDuBey@scblaw.com><<mailto:RDuBey@scblaw.com>

Sent: Thursday, April 28, 2016 4:57 PM

To: Olson, Erik

Cc:

[KHanson@ldftribe.com](mailto:KHanson@ldftribe.com)<<mailto:KHanson@ldftribe.com><<mailto:KHanson@ldftribe.com><<mailto:KHanson@ldftribe.com>

Dee.allen@ldftribe.com<mailto:Dee.allen@ldftribe.com><mailto:Dee.allen@ldftribe.com><mailto:Dee.allen@ldftribe.com><mailto:Dee.allen@ldftribe.com>

[lwawronowicz@ldftribe.com](mailto:lwawronowicz@ldftribe.com)<<mailto:lwawronowicz@ldftribe.com><<mailto:lwawronowicz@ldftribe.com><[mailto:](mailto:lwawronowicz@ldftribe.com)



Subject: Call with EPA Set for May 6th at 1:00 pm CT

Dear Erik:

We are all set for our call next Friday. Would you like me to set up a call in number?

Richard

Richard A. Du Bey, Attorney | 206.470.3587 (direct)

Short Cressman &amp; Burgess PLLC | 206.682.3333 (main) | 206.340.8856 (fax)

999 Third Avenue, Suite 3000 | Seattle, Washington 98104-4088 |  
[www.scblaw.com](http://www.scblaw.com)<<http://www.scblaw.com><<http://www.scblaw.com><<http://www.scblaw.com>>>

Seattle Attorneys at Law | Short Cressman & Burgess PLLC<<http://www.scblaw.com/>>  
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Celebrating 100 Years of Legal Service. March 28, 2016 by SCB Law Staff. Short Cressman & Burgess celebrated the firm's 100th anniversary last year.

[SCB\_anniversary-logo\_email-signature]

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